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SENATE BILL 511

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Don Kidd

AN ACT

RELATING TO STATE REVENUE; PROVIDING THAT CERTAIN TAX REVENUES PAID BY CERTAIN RACETRACKS AND GAMING TAX REVENUES PAID BY CERTAIN GAMING OPERATOR LICENSEES THAT ARE RACETRACKS BE USED FOR GRADUATE STUDENT SCHOLARSHIPS; CREATING THE GRADUATE STUDENT SCHOLARSHIP FUND; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] GRADUATE STUDENT SCHOLARSHIP FUND--CREATED--SCHOLARSHIP PROGRAM.--

A. The "graduate student scholarship fund" is created in the state treasury. The fund shall be administered by the commission on higher education. Earnings from investment of the fund shall accrue to the credit of the fund and unexpended and unencumbered balances in the fund shall not revert to any other fund.

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1 B. Money in the graduate student scholarship fund
2 is appropriated to the commission on higher education for
3 distribution to New Mexico's public post-secondary educational
4 institutions with graduate schools for the purpose of providing
5 scholarships to New Mexico residents pursuing advanced degrees
6 at those schools.

7 C. The commission on higher education shall develop
8 guidelines, procedures and qualifications for the application
9 and award of the scholarships provided for in this section.

10 Section 2. A new section of the Tax Administration Act is
11 enacted to read:

12 "[NEW MATERIAL] DISTRIBUTION--GRADUATE STUDENT SCHOLARSHIP
13 FUND--CERTAIN GAMING TAX RECEIPTS.--A distribution pursuant to
14 Section 7-1-6.1 NMSA 1978 shall be made to the graduate student
15 scholarship fund in the amount of the net receipts attributable
16 to the gaming tax paid by those gaming operator licensees that
17 are racetracks and located in a class B county with a
18 population, as shown by the most recent federal decennial
19 census, of greater than fifty thousand and less than eighty
20 thousand and with a net taxable value for property tax purposes
21 of greater than one million dollars (\$1,000,000)."

22 Section 3. Section 60-1-8 NMSA 1978 (being Laws 1933,
23 Chapter 55, Section 4, as amended by Laws 1991, Chapter 7,
24 Section 2 and by Laws 1991, Chapter 195, Section 1) is amended
25 to read:

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1 "60-1-8. TIME FOR FILING APPLICATION--AMOUNT OF DAILY
2 TAX.--

3 A. Application shall be filed not less than sixty
4 days prior to the first day the proposed races or meetings are
5 to be held, and at the time pari-mutuel wagering is conducted,
6 the applicant shall pay to the state racing commission the
7 daily tax provided by this section.

8 B. The daily tax to be paid whenever the licensee
9 offers pari-mutuel wagering on live on-track races shall be:

10 (1) for a class A license, six hundred fifty
11 dollars (\$650) for each racing day authorized by the state
12 racing commission; and

13 (2) for a class B license, one-eighth [~~of one~~]
14 percent of a class B licensee's gross daily handle, up to a
15 maximum of three hundred dollars (\$300), for each racing day
16 authorized by the state racing commission for class B licenses.

17 C. Except as provided in Section 60-1-27 NMSA 1978,
18 the daily tax provided in Subsection B of this section shall go
19 to the credit of the general fund; provided, however, that for
20 a class A license located in an incorporated municipality with
21 a population, according to the 1990 federal decennial census,
22 that is either:

23 (1) less than six thousand persons if located
24 in a county with a population of more than ten thousand but
25 less than fifteen thousand persons; or

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1 (2) more than eight thousand but less than ten
2 thousand persons if located in a county with a population of
3 more than one hundred thousand but less than one hundred fifty
4 thousand persons; then one hundred fifty dollars (\$150) of the
5 daily tax paid by those class A licensees that qualify under
6 Paragraphs (1) and (2) of this subsection shall be paid to the
7 municipality in which each licensee is located.

8 D. The daily tax to be paid whenever the licensee
9 offers no pari-mutuel wagering on live on-track races and
10 offers solely pari-mutuel wagering on simulcast races pursuant
11 to Section 60-1-25 NMSA 1978 shall be one-eighth [~~of one~~]
12 percent of the licensee's gross daily handle, up to a maximum
13 of three hundred dollars (\$300), for each racing day authorized
14 by the state racing commission.

15 E. The daily tax for any state fair association
16 designated by law, which in good faith conducts a public fair
17 and exhibition of stock and farming products, shall be six
18 hundred fifty dollars (\$650) per day for each racing day
19 authorized; provided, however, that where a licensed state fair
20 association offers no pari-mutuel wagering on live on-track
21 races and offers solely pari-mutuel wagering on simulcast races
22 pursuant to Section 60-1-25 NMSA 1978, the daily tax shall be
23 one-eighth [~~of one~~] percent of the licensee's gross daily
24 handle, up to a maximum of three hundred dollars (\$300)."

25 Section 4. Section 60-1-10 NMSA 1978 (being Laws 1933,

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1 Chapter 55, Section 6, as amended) is amended to read:

2 "60-1-10. PARI-MUTUEL METHOD LEGALIZED--MAXIMUM
3 COMMISSIONS--HORSEMEN'S COMMISSION--GAMBLING STATUTES NOT
4 REPEALED--COMMISSION DISTRIBUTION.--

5 A. Within the enclosure where any horse races are
6 conducted, either as live on-track horse races or as horse
7 races simulcast pursuant to Section 60-1-25 NMSA 1978, and
8 where the licensee has been licensed to use the pari-mutuel
9 method or system of wagering on races, the pari-mutuel system
10 is lawful, but only within the enclosure where races are
11 conducted.

12 B. The sale to patrons present on the grounds of
13 pari-mutuel tickets or certificates on the races or the use of
14 the pari-mutuel system shall not be construed to be betting,
15 gambling or pool selling and is authorized under the conditions
16 provided by law.

17 C. There shall be for each class A licensee a
18 commission of nineteen percent of the gross amount wagered on
19 win, place and show through the pari-mutuel system, of which
20 eighteen and three-fourths percent shall be retained by a class
21 A licensee and, except as provided in Section 60-1-27 NMSA
22 1978, one-fourth [~~of one~~] percent shall be allocated to the
23 general fund. A commission in an amount determined by the
24 licensee of not less than eighteen and six-eighths percent and
25 not greater than twenty-five percent of the gross amount

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1 wagered on win, place and show through the pari-mutuel system
2 shall be retained by a class B licensee. Each class B licensee
3 shall advise the state racing commission not less than thirty
4 days in advance of each horse racing meeting of the percentage
5 the licensee shall retain as commission. From that commission,
6 each class A and class B licensee shall allocate five-eighths
7 [~~of one~~] percent to the New Mexico horse breeders' association
8 weekly for distribution pursuant to the provisions of
9 Subsection C of Section 60-1-17 NMSA 1978.

10 D. Except as otherwise provided in this subsection,
11 a commission shall be retained by the licensee at the election
12 of each class A licensee of not less than twenty-one percent
13 and not greater than twenty-five percent of the gross amount
14 wagered on exotic wagering and at the election of each class B
15 licensee, and with the approval of the state racing commission,
16 of not less than twenty-one percent and not greater than thirty
17 percent of the gross amount wagered on exotic wagering. For
18 the purpose of this subsection, "exotic wagering" means all
19 wagering, other than win, place and show, through the pari-
20 mutuel system. Each licensee shall advise the state racing
21 commission not less than thirty days in advance of each horse
22 racing meeting of the amount of the commission of the gross
23 amount wagered on exotic wagering to be retained by the
24 licensee. From that commission, the licensee shall allocate
25 one and three-eighths percent to the New Mexico horse breeders'

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1 association weekly for distribution pursuant to the provisions
2 of Subsection C of Section 60-1-17 NMSA 1978.

3 E. The odd cents of all redistributions to the
4 wagerer over the next lowest multiple of ten from the gross
5 amount wagered through the pari-mutuel system shall be retained
6 by the licensee, with fifty percent of the total being
7 allocated to enhance the race purses of established stake races
8 that include only horses registered as New Mexico bred with the
9 New Mexico horse breeders' association, to be distributed by
10 the New Mexico horse breeders' association pursuant to
11 Paragraph (3) of Subsection C of Section 60-1-17 NMSA 1978
12 subject to the approval of the state racing commission.

13 F. All money resulting from the failure of patrons
14 who purchased winning pari-mutuel tickets during the meeting to
15 redeem their winning tickets before the end of the sixty-day
16 period immediately succeeding the closing day of the meeting
17 and all money resulting from the failure of patrons who
18 purchased pari-mutuel tickets that were entitled to refund but
19 were not refunded during the same sixty-day period shall be
20 apportioned as follows:

21 (1) thirty-three and thirty-three hundredths
22 percent shall be retained by the licensee;

23 (2) thirty-three and thirty-four hundredths
24 percent shall be distributed to the New Mexico horse breeders'
25 association to enhance each track's established overnight

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1 purses for races that include only horses registered as New
2 Mexico bred with the New Mexico horse breeders' association
3 pursuant to Paragraph (3) of Subsection C of Section 60-1-17
4 NMSA 1978, subject to the approval of the state racing
5 commission; and

6 (3) thirty-three and thirty-three hundredths
7 percent shall be allocated to ~~[horseman's]~~ horsemen's race
8 purses.

9 G. To promote and improve the quality of horse
10 racing and simulcasting and the participation of interested
11 persons in horse racing in New Mexico, one-half ~~[of one]~~
12 percent of the gross amount wagered on simulcast horse races at
13 each licensed racetrack in New Mexico that receives simulcast
14 horse races shall be allocated by each licensee for
15 distribution to the New Mexico horsemen's association; provided
16 that at least ~~[one-quarter of one]~~ one-fourth percent of the
17 gross amount wagered on simulcast races that is so allocated is
18 used solely for medical benefits for the members of the New
19 Mexico horsemen's association, and provided further that the
20 remaining ~~[one-quarter of one]~~ one-fourth percent of the gross
21 amount wagered on simulcast races that is so allocated shall be
22 used to enhance purses at each such licensed racetrack. The
23 state racing commission shall by regulation provide for the
24 timing and manner of the distribution required by this
25 subsection and shall audit, or arrange for an independent audit

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1 of, the disbursement required by this subsection.

2 H. Fifty percent of the net retainage of each
3 licensee shall be allocated to race purses. For purposes of
4 this section, "net retainage" of the licensee means the
5 commission retained by the licensee on all forms of wagers
6 minus:

7 (1) the taxes delineated in Sections 60-1-8
8 and 60-1-15 NMSA 1978;

9 (2) money allocated to the New Mexico horse
10 breeders' association by this section and Section 60-1-17 NMSA
11 1978;

12 (3) money allocated to the New Mexico
13 horsemen's association by this section;

14 (4) a deduction for expenses incurred to
15 engage in intrastate simulcasting pursuant to Section
16 60-1-25 NMSA 1978, provided that:

17 (a) the deduction for each licensee
18 shall be a portion of five percent of the gross amount wagered
19 at all the sites receiving the same simulcast horse races;

20 (b) the deduction portion for each
21 licensee shall be an amount allocated to the licensee by
22 agreement voluntarily reached among all the licensees sending
23 or receiving the same simulcast horse races; and

24 (c) the deduction portion for each
25 licensee shall be an amount allocated to the licensee by the

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1 state racing commission if all the licensees sending or
2 receiving the same simulcast horse races fail to reach a
3 voluntary agreement under Subparagraph (b) of this paragraph;
4 and

5 (5) a deduction for fees and commissions
6 incurred to receive interstate simulcasts pursuant to Section
7 60-1-25 NMSA 1978.

8 I. Existing statutes of this state against horse
9 racing on Sundays or on bookmaking, pool selling or other
10 methods of wagering on the racing of horses are not repealed
11 but are hereby expressly continued in effect, with the
12 exception that the operation of the pari-mutuel method or
13 system in connection with the racing of horses, when used as
14 provided by law, is lawful.

15 J. In the event any money paid or allocated to the
16 New Mexico horse breeders' association or the New Mexico
17 Appaloosa racing association pursuant to the Horse Racing Act
18 cannot be paid to or allocated or administered by such
19 associations, then the state racing commission, or such other
20 organization as may be designated, retained or absolutely
21 controlled by the state racing commission, shall receive all
22 such money and shall pay, allocate and administer all such
23 money pursuant to the provisions of Section 60-1-17 NMSA 1978.
24 If the state racing commission or its controlled designee is
25 required to pay, allocate or administer money on behalf of the

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1 New Mexico horse breeders' association or the New Mexico
2 Appaloosa racing association pursuant to this subsection, then
3 the maximum percentage of funds set forth in Paragraph (3) of
4 Subsection C of Section 60-1-17 NMSA 1978 shall be paid by the
5 state racing commission to the New Mexico horse breeders'
6 association or the New Mexico Appaloosa racing association as a
7 fee to obtain the certification of the registry of the dam and
8 stud of the New Mexico bred horse.

9 K. In the event any money paid or allocated to the
10 New Mexico horsemen's association pursuant to the Horse Racing
11 Act cannot be paid to or allocated or administered by the
12 association, then the state racing commission, or such other
13 organization as may be designated, retained or absolutely
14 controlled by the state racing commission, shall receive all
15 such money and shall pay, allocate and administer all such
16 money to achieve the purposes of the provisions of this
17 section."

18 Section 5. Section 60-1-15 NMSA 1978 (being Laws 1933,
19 Chapter 55, Section 9, as amended) is amended to read:

20 "60-1-15. TAX LEVIED--CERTAIN LICENSE FEES AND TAXES
21 PROHIBITED.--

22 A. In addition to the daily tax provided in Section
23 60-1-8 NMSA 1978, a tax of two and three-sixteenths percent is
24 levied on the gross amount wagered each day at each place where
25 horse racing is conducted by any state fair association

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1 designated by law that in good faith conducts a public fair and
2 exhibition of stock and farming products or where horse racing
3 for profit is held. The tax shall be paid from the commissions
4 of the licensee.

5 B. To encourage the improvement of horse racing
6 facilities for the benefit of the public, breeders and horse
7 owners and to increase the revenue to the state from the
8 increase in pari-mutuel wagering and tourism resulting from
9 these improvements, not more than two percent of the tax levied
10 under Subsection A of this section:

11 (1) for the first two hundred fifty thousand
12 dollars (\$250,000) of daily handle only, shall be offset for
13 class A licensees by the amount that each licensee expends for
14 capital improvements or in financing term investment in capital
15 improvements at existing racetrack facilities and for class B
16 licensees by the amount that the licensee expends for capital
17 improvements, not to exceed fifty percent of the tax levied
18 under this section, and by the amount the licensee expends for
19 advertising, marketing and promoting horse racing in the state,
20 not to exceed fifty percent of the tax levied under this
21 section. The offset provided in this paragraph shall also
22 apply to the daily handle generated at its facility by a
23 licensee engaged solely in simulcasting pursuant to Section
24 60-1-25 NMSA 1978. The term "capital improvement" means any
25 capital investment in items that are subject to depreciation

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1 under the United States Internal Revenue Code of 1986 and are
2 approved by the state racing commission; and

3 (2) for class A licensees for the period
4 through June 30, 1995 for the total amount wagered each day on
5 amounts in excess of two hundred fifty thousand dollars
6 (\$250,000) but not in excess of three hundred fifty thousand
7 dollars (\$350,000), shall be offset by the amount that each
8 licensee expends for advertising, marketing and promoting horse
9 racing in the state. The offset provided in this paragraph
10 shall also apply to the daily handle generated at its facility
11 by a licensee engaged solely in simulcasting pursuant to
12 Section 60-1-25 NMSA 1978. The licensee is required to keep
13 accurate records of any expenditures made pursuant to this
14 paragraph, and the state auditor is required to audit the
15 expenditures and submit his report to the state racing
16 commission.

17 C. To compensate for the additional municipal
18 services required by the location of a racetrack within a
19 municipality, an amount of revenue derived from the tax levied
20 on such a racetrack under Subsection A of this section, above
21 the amount offset by capital expenditures and advertising as
22 provided in Subsection B of this section, shall be transferred
23 to the municipal treasurer of the municipality in which the
24 track generating the revenue is located for expenditure by the
25 municipality in providing those additional municipal services.

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1 The amount to be transferred shall be determined in accordance
2 with the provisions of Section 60-1-15.2 NMSA 1978.

3 D. Accurate records shall be kept by the licensee
4 to show all commissions, total gross amounts wagered and
5 breakage, as well as other information the state racing
6 commission may require. Records shall be open to inspection
7 and shall be audited by the commission or any of its authorized
8 representatives. Should any licensee fail to keep records
9 accurately and intelligibly, the commission may prescribe the
10 method in which the licensee shall keep records.

11 E. Except as provided in Section 60-1-27 NMSA 1978,
12 all remaining revenues collected as a result of the tax on the
13 gross amount wagered shall be deposited in the state general
14 fund.

15 F. Notwithstanding any other provision of law, no
16 political subdivision of this state may impose any occupational
17 tax against a racetrack operating under authority of a license
18 granted by the state racing commission. No political
19 subdivision may levy an excise tax against any racetrack
20 operating under authority of a license granted by the state
21 racing commission, except that taxes imposed pursuant to [~~the~~
22 ~~County Gross Receipts Tax Act, the County Fire Protection~~
23 ~~Excise Tax Act, the County Sales Tax Act, the Municipal Gross~~
24 ~~Receipts Tax Act, the Supplemental Municipal Gross Receipts Tax~~
25 ~~Act and the Special Municipal Gross Receipts Tax Act]~~ a local

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1 option gross receipts tax, as defined in Subsection H of
2 Section 7-1-3 NMSA 1978, may be imposed to the extent permitted
3 by law."

4 Section 6. Section 60-1-16 NMSA 1978 (being Laws 1933,
5 Chapter 55, Section 10, as amended) is amended to read:

6 "60-1-16. SUSPENSE FUND TO PAY CLAIMS.--From the funds
7 derived from license fees and taxes, the state racing
8 commission is authorized to create a special suspense fund with
9 the state treasurer [~~of the state~~] in an amount not to exceed
10 three thousand dollars (\$3,000) to pay all legal claims for
11 refunds. Except as provided in Section 60-1-27 NMSA 1978, any
12 surplus over and above the maximum suspense fund amount shall
13 be deposited into the general fund [~~of the state~~]."

14 Section 7. A new section of the Horse Racing Act, Section
15 60-1-27 NMSA 1978, is enacted to read:

16 "60-1-27. [NEW MATERIAL] REVENUE DISTRIBUTION--GRADUATE
17 STUDENT SCHOLARSHIP FUND.--In lieu of the transfer otherwise
18 required by Section 60-1-16 NMSA 1978, receipts from the
19 following taxes, paid by a racetrack located in a class B
20 county with a population, as shown by the most recent federal
21 decennial census, of greater than fifty thousand and less than
22 eighty thousand and with a net taxable value for property tax
23 purposes of greater than one million dollars (\$1,000,000),
24 shall be distributed to the graduate student scholarship fund:

25 A. the daily tax imposed by Section 60-1-8 NMSA

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1 1978;

2 B. one-fourth percent of the gross amount wagered
3 on win, place and show and received as commission by a class A
4 licensee pursuant to Subsection C of Section 60-1-10 NMSA 1978;
5 and

6 C. the tax on gross amount wagered imposed by
7 Section 60-1-15 NMSA 1978."

8 Section 8. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2004.

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